MANDATE

04-10360
USDC/MA
Tauro, J

United States Court of Appeals
For the First Circuit

No. 06-1472

WILLIE GREEN,
Petitioner, Appellant,

v.

CAROL MECI, ACTING SUPERINTENDENT OR HER SUCCESSOR,
MCI SHIRLEY,
Respondent, Appellee.

Before

Boudin, Chief Judge,
Torruella and Howard, Circuit Judges.

JUDGMENT

Entered: June 29, 2006

Petitioner Willie Green seeks a certificate of appealability (COA) in order to challenge the denial of his petition for habeas relief under 28 U.S.C. § 2254. A COA may not issue unless "the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where, as here, the "district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c)(2) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 327 (2003).

Petitioner first seeks further review of the district court's determination that his constitutional claims were subject to de novo review because the state appeals court failed to adjudicate them. However, since all of the constitutional claims arose from the omitted jury instruction, and the appeals court expressly found that, even if the failure to instruct was constitutional error, the error was harmless beyond a reasonable doubt under Chapman v. California, 386 U.S. 18, 24 (1967), the district court's determination that the state court considered and adjudicated those claims in "wholesale fashion" is beyond debate.

We further conclude, after careful review of the record and petitioner's submissions, that the district court's conclusion that the state court's harmless-error ruling was not contrary to or an unreasonable application of Neder v. United States, 527 U.S. 1 (1999), is not reasonably debatable. The facts here are distinct from those in Neder, and there is nothing in Neder to suggest that the Supreme Court intended its ruling to be "specifically intended for application to variant factual situations[.]" O'Brien v. Dubois, 145 F.3d 16, 25 (1st Cir. 1998) Nor do we think that the state court unreasonably applied federal law when it ruled that any error in failing to give the additional instruction was harmless beyond a reasonable doubt. Since petitioner has not "made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), the request for a certificate of appealability is denied and the appeal is terminated.

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By: _____
Chief Deputy Clerk.

Certified and Issued as Mandate under Fed. R. App. P. 41.

Richard Cushing Donovan, Clerk

MG

Deputy Clerk

Date: 7/21/06

[cc: Philip G. Cormier, Esq., Natalie S. Monroe, Esq., Susanne G. Reardon, AAG]